

Good Care is Your Right!

A Consumers Guide to Nursing Home Resident Rights in Montana

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Introduction

This booklet has been written for residents of Montana's nursing homes, their families and friends, as well as others concerned about nursing home care.

As a nursing home resident, your lifestyle has changed but your rights as a citizen have not. State and federal nursing home resident rights laws take your constitutional rights and tell you how they apply to an institutional setting. This booklet summarizes your rights as a resident. It emphasizes what you can expect and what facilities must do.

Chapter One states in plain English what these laws and regulations mean for residents. It also discusses how rights interrelate with daily care issues. **Chapter Two** provides suggestions for resolving complaints or problems, both within the facility or with outside help. To quickly find what you're looking for, skim the table of contents or side headings.

Laws and regulations set overall standards for care. Taken together, they outline basic requirements for the health, safety, welfare and rights of nursing home residents. However, laws and regulations alone cannot guarantee nursing home residents a safe, clean, healthy and pleasant environment. Consumers must take action when problems occur, or rights are just some writing on a piece of paper.

Residents, their friends and families, nursing home staff, volunteers and the community at large must all work together to ensure quality care by knowing legal requirements and making sure they are honored. We hope you will find this booklet a helpful consumer's guide to nursing home services. Remember:

Good care is your right!

Copies of the federal and state resident rights laws and regulations are not reprinted in this booklet due to their length. You should receive and sign a copy of them when you first enter the facility. If you would like a large print copy of the complete legal language, contact your Local or State Ombudsman. □

**SPECIAL NOTE FOR COURT-APPOINTED
GUARDIANS OR CONSERVATORS:**

This book is written directly to residents. When you read this book, put yourself in the resident's place. All resident rights and the responsibility for asserting these rights rest with you as their legal representatives. □

CHAPTER ONE:

Your Rights as a Resident

It's important to know and assert your personal rights in the nursing home. This is no easy matter. First you must know what those rights are.

This chapter provides basic information about your rights and how they apply to your daily life in the nursing home. It is based on a detailed set of federal and state laws and regulations. Recent changes in federal laws strengthen resident rights requirements and set higher care standards. They stress residents having greater control and decision making authority over their daily life and increasing the quality of life in nursing homes.

Your personal rights, the rights of other residents and the rights of the facility and its staff all intermix in the nursing home setting. The responsibility for arriving at a workable balance of these rights is one you share with other residents and the staff of the facility.

As a reminder, Chapter Two offers problem solving suggestions, should you need them. □

Right to Information

The facility must make sure you are aware of and understand basic information you need to know so you can function as fully and independently as possible during your stay. Below is information you should be aware of when you first enter a facility.

Admission agreements

Before you can begin living in a nursing home, you and the facility must agree about your joint duties, rights and responsibilities. These are spelled out in a written contract, **the admission agreement**.

The admission agreement is an important document. Don't sign it until you fully understand it. You will want to keep a copy in a secure place in case you need to refer to it in the future.

The facility representative will help explain the provisions of this contract. Unanswered questions could be clarified with an attorney or other advocacy group.

You do not have to have someone else (a third party guarantor) co-sign your admission agreement or take on any responsibility for paying your bills at the facility. However, if someone else is managing your money at your request, then they are liable if they don't pay your bills at the nursing home. □

Resident rights and responsibilities

The facility must inform you, both orally and in writing, of your rights and responsibilities when you first enter and at least once a year thereafter. If you don't get an annual review, ask staff or an ombudsman to review them with you. Make sure to ask questions about anything that is unclear.

Consider taking as active a part in the facility as you can. Your knowledge, skills, interests and energies can make a difference. Residents who voice their questions, concerns and suggestions help the facility run smoothly and respond to the needs of residents.

Services and charges

Upon your admission, the facility must provide you with written information about:

- the services, supplies and equipment available to you in the facility;
- any charges for services and supplies that are not included in the facility's basic daily rate;
- the charges your medical insurance, Medicaid or Medicare will cover; and
- the charges you will have to pay for yourself.

If rates or charges change, the facility must let you know 30 days in advance. All residents, regardless of their method of pay, have a right to know what their monthly charges are. The facility must provide an itemized monthly bill if you ask for one. □

Medical information

You have the right to full and up-to-date information about your medical condition, unless you choose not to know. This includes your diagnosis, health status, plan of care and any treatment options. To allow your participation and consent, you should be told in advance of any potential changes in care or treatment. Your doctor and the facility share these responsibilities. They should explain all this in everyday language.

Access to medical records

You have the right to review and get copies of all your current records, including your medical records. You can give someone else a release to review or get copies of your records also.

The facility must honor your request to see your records within 24 hours (except on weekends or holidays) or make copies within 48 hours. They can charge you the going community rate for the copies (e.g., what the library charges).

You don't have to have your doctor's permission to see your records or have anyone else present. You may want to have someone with medical knowledge help you review and interpret the records. □

Injuries or accidents

In the event of any significant accident, unexplained absence, or significant changes in your health status or need for treatment, the facility must contact someone on your behalf. Your doctor must be called immediately on significant medical problems. A family member or someone else must also be contacted, if you want. Make sure you pick a person the facility can reach easily. This person should be contacted immediately after any incident or change. The facility must document in your records any incident or change as well as who was contacted.

Bed holds

You may need temporary hospitalization or may wish to go home for short visits (called therapeutic home leaves). Requirements for holding your bed during temporary absences depend on your method of payment.

If you are a Medicaid recipient, the facility must hold your bed for you during these temporary absences. You cannot be charged extra for holding the bed. Private pay residents may have to pay for any bed holds.

The facility must provide you and your family or legal representative written notice about bed hold policies prior to and at the time of any temporary absence. □

Discharge or transfer

At the time you move in, you should be told your rights regarding **transfer** (being moved to another level of care within the facility or to another facility) and **discharge** (going back home). The facility can transfer or discharge you against your will only if they can show that:

- you have specific, medically-related care needs the facility cannot meet;
- the health and/or safety of another resident would be endangered;
- after reasonable notice, you have not paid your bill at the facility; or
- your health is better and you no longer need nursing home care.

The basis for the move must be documented in your facility records. You and your family or legal representative must receive written notice **30 days before** any involuntary moves, except in emergencies or when a delay would hamper appropriate medical care. The notice must state why you are being discharged, what your appeal rights are and how to contact the Ombudsman Program or other advocacy groups to help you with an appeal. Finally, if you have to move, you should receive enough preparation from the facility to ensure as smooth a transition as possible to your next placement. □

Changes in rooms and roommates

The facility should consider your wishes before any decision is made about changing your room or roommate. If the facility decides to move you, they must inform you at that point **when** they plan to move you and **why**. You should be given a chance to say whether you want to move or not, to exercise some choice in roommates, and to prepare for the move. You have the right to ask for a room or roommate change also.

If you are on Medicaid, become eligible for Medicare payment for your room, and you are already in a "skilled" wing of the nursing home, you don't have to move to a different room or bed if you don't want to.

Medicaid assistance

The Medicaid Program helps pay for nursing home care for those who could not otherwise afford care. To be eligible for Medicaid in a nursing home, you must meet certain medical and financial criteria. **Can Medicaid Help ME With My Nursing Home Bills?**, a pamphlet available from the Ombudsman Program or your local Welfare Office, offers more details, including special provisions for married couples.

The facility must provide you information about applying for Medicaid if you need financial help. You have the right to apply for Medicaid benefits at any time during your stay. Applying for Medicaid benefits should never affect your stay in the facility or the quality of services you receive. □

Medicaid covered services

Room

Dietary services

Nursing services

Personal hygiene care

Over the counter medications

Laundry services Routine supplies

Medical equipment

Transportation

If Medicaid is helping you pay for your stay, the following is an overview of commonly used items Medicaid covers. Facility admission contracts have a complete list. **You can not be charged for these items.**

- a double occupancy room, or if medically necessary, a private room
- including dietary supplements, special diets, tube feedings
- including assistance with daily living skills (eg., bathing, eating, dressing), nursing rehabilitation services, routine bed sore care, incontinency care
- shampoo, brush and comb
- toothpaste, tooth brush, floss, denture cleaners and adhesives
- razors and shaving cream
- hand, bath and disinfecting soaps
- aspirin, acetaminophen, cough syrups, antacids (like mylanta or maalox), laxatives (like milk of magnesia), suppositories, and nasal decongestants and antihistamines
- normal laundry (not dry cleaning)
- gowns, incontinence pads and supplies, facial tissues, skin care lotions and ointments, first aid supplies, ice bags, and hot water bottles
- standard wheelchairs, walkers, canes, equipment geriatric chairs, commode chairs, bedpans, suction machines and lift apparatus
- Coverage is for non-emergency, routine transportation to medical appointments at medical offices, hospitals and clinics. **Families may provide medical transportation if they wish, but they are not required to do so.** Facilities must also provide rides for routine activities scheduled in the community. □

**Allowable
charges to
residents/not
covered by
Medicaid**

- Personal dry cleaning
- Vitamins, vitamin supplements
- Personal clothing
- Cable TV, private telephone service
- Beauty shop services
- Tobacco, candy, notions and other personal comfort items
- Personal reading material
- Flowers and plants
- Social activities outside the normal scope of the activities program
- If residents request specific brands of personal hygiene items other than those the facility routinely provides as Medicaid covered items, the resident may be **charged the difference in the cost over the routine stock items.**
- If family members want a resident to be in a private room, they can pay the difference between the Medicaid rate and the private rate. Facilities can also allow a Medicaid resident to stay a private pay room at no additional cost, though they are not required to unless there is a medical necessity. □

Rights Concerning Daily Care Issues

Resident rights ensure that you remain able to make choices about daily issues once you enter a nursing home. This section shows how your rights are woven into the fabric of each area of daily care. You will want to continue to exercise your rights and express your preferences to maintain a sense of control over your life and receive quality care.

Comprehensive Resident Assessment

The foundation for quality care begins with a thorough resident assessment. You must receive a comprehensive evaluation by the facility within 14 days of admission, after any significant change in your condition, and at least annually. The assessment must be reviewed and updated quarterly.

The assessment should provide the facility with information on:

- what your usual daily patterns were before you entered the facility;
- what your personal preferences and lifelong habits are;
- what your abilities are to perform daily living skills (such as eating, bathing, dressing, walking, or communicating) and what levels of help you need in these areas; and
- any health conditions that may require care or treatment. □

Your care plan

Your care plan is an individualized blueprint detailing what kind of care and services you will receive on a daily basis in the nursing home.

Care plans are a written document based on your comprehensive resident assessment. The overall goal of your care plan is for you **to reach and maintain your highest practicable level of physical, mental, and social functioning and well being**. Care plans should take into account your lifelong habits and routines and stress resident independence and decision making.

Your care plan is developed by **you** and a team of facility staff (including your doctor, nurses, aides, dietary staff, therapists, activities staff and/or social workers) who are familiar with your needs and wishes. It should identify:

- your unique care needs and how the facility will address them;
- your immediate and longer-term care goals; and
- who is responsible for the different aspects of your care.

The facility must let you (or others you wish to have attend) know in advance when and where planning meetings are to be held.



Taking a decisive role in your care

Your plan of care is based on your input, the facility's and your doctor's. You have a right to be actively involved in planning your care and treatment.

To make good decisions about your care, you need to be told your choices. If you have concerns or suggestions, discuss them with the staff and your doctor. You'll want to give their ideas strong consideration, but final decisions on your care or treatment rest with you.

Choice of doctor

You have the right to choose your doctor (as long as the doctor has practicing privileges in your facility). Here are some questions you might ask:

- How often does the doctor routinely visit the facility? (Other residents can help to answer this.)
- Is the doctor willing to advise you and cooperate with you in developing your plan of care?
- How accessible is the doctor outside of routine facility visits?

It's important that the doctor you choose be someone you have confidence in and who will consider your wishes before ordering care and treatment.

Make a note of your doctor's name and specialty, address, phone number and facility visiting schedule. □

Doctor services and visits

Your doctor has to prescribe the specific kinds of care and treatments you need (such as physical therapy, special diets or medications) before the facility can provide them.

How often your doctor visits you depends on how long you've been a resident.

Doctors are required to visit residents every 30 days for the first three months of stay, and then at least 60 days thereafter. Doctor visits may be done by physician assistants or nurse practitioners, under the doctor's supervision.

The doctor must have face to face contact with you during the visit, and not just review your records.

Refusal of care and treatment

You have the right to refuse any care or treatment (e.g., medications, special diets, and restraint use). Consistent refusals should be documented in your records. If you refuse any care, the facility must:

- assess the reasons for your refusal, including any personal preferences;
- educate you about the consequences of your refusal;
- tell you of alternative treatments;
- modify your care plan as needed; and
- continue to provide all other care and services.

Choice of pharmacy

Your ability to choose a pharmacy may depend on how your facility administers medications. If having a choice may save you money, you'll want to know your options in advance. The facility must inform you upon admission and state in its admission contract if they restrict your choice.

Medications

All medication must be administered according to your doctor's directions. Medications must be given on time and in the correct amounts and manner.

Prescriptions must be individually purchased for each resident. The facility is responsible for storing all prescription medications. Only licensed nurses are allowed to pass medications.

You can administer your own medications if you want. Your doctor and care planning team have to determine if you can safely do so. If you take on this responsibility, you'll have to meet criteria for documenting and securely storing medications in your possession.

For your own safety, check with your doctor before using any non-prescription medications. Facility policies vary on how residents can use or store over-the-counter drugs. □

Adequate staffing

Simply stated, facilities must have enough staff on all shifts to meet residents' needs. Weekends, holidays and staff breaks are no exceptions.

A licensed nurse must be in the facility or, at the very least, on call 24 hours a day. Staff should also be well-trained and supervised in order to meet resident needs adequately.

Exercise and physical therapy

The extent of exercise and physical activity you receive is determined by the care planning process and your doctor's orders. The goal of any program is to keep you independent and active.

A variety of programs may be used. Physical therapy, which must be ordered by your doctor, is a specialized service aimed at restoring and maintaining lost physical functioning. Facilities usually have daily group exercise programs you can join. Individual programs that encourage residents to walk to the bathroom or dining room or "range of motion" programs that exercise joints and muscles are further options.

If you are weak or ill and can't exercise your arms and legs, staff should regularly exercise them for you. This will help prevent bodily deformities and discomfort.



Bedsore prevention

Extended pressure on the skin can cause bedsores. They are usually preventable. If you are bedridden or chair-bound, staff should change your bodily position at least every two hours. If bedsores do occur, your doctor should be told immediately.

Calling for help

Nursing homes must have call systems so residents can easily ring for help from their beds, toilets and bathing areas. The system must register calls at the nurses' station. You can expect the staff to regularly answer your calls within a reasonably short time. If they don't, the facility is simply not providing proper care and is violating regulations.

Personal cleanliness

How often you get help with personal hygiene should be based on your personal needs and preferences. At least one bath a week is required. Every resident should be given a shampoo at least once every two weeks. Proper care for your teeth and gums should be given daily.

Daily grooming help for bathing, dressing, hair combing and shaving should be given early enough in the day so you will be ready to take part in daily activities of your choice.

Clothing must be clean, in good condition, fit reasonably well, and suit the season and time of the day. □

Assistance with toileting

If you wet or soil your clothing or bedding, you are entitled to have them changed promptly. The nursing staff must also work with you if you need bowel and bladder management retraining. Retraining includes helping you to the toilet at regular intervals. Someone should come promptly whenever you call for help.

The use of a catheter (a tube in the bladder) requires a doctor's order and should only be used for medical reasons, never because it would be easier than helping you to the bathroom.

Bedpans should be emptied and rinsed fairly soon after each use, as well as thoroughly cleaned regularly.

Accommodating your needs

Facilities must take steps to ensure you are able to do as much as possible for yourself. Alteration of the facility's equipment and environment should be made to increase your independence, safety and ability to get around the facility as easily as possible.

Are chairs, tables and beds set at a comfortable height for you? Are there grab bars nearby so you can get on and off the bathroom stool easily? Could you eat more easily with specially adapted utensils? Is your wheelchair fitted so it's comfortable and promotes good posture? Can you get a drink of water from the fountain without help? ☐

Experimental or hazardous treatment

The facility must fully inform you of the nature, possible consequences and potential problems of any hazardous, experimental or irreversible treatments. Discuss the risks and benefits with your doctor. You have the right to agree or refuse to take part in any treatment. If you agree to accept an experimental treatment, your decision to do so must be documented in writing.

Food service

Food service is one of the most important services facilities provide. It's also the one most subject to individual tastes. Some basic requirements follow.

- The facility must prepare food in ways that preserve nutritional value, flavor and appearance.
- Food must be served at proper temperatures.
- Meals should have adequate portions and be nutritionally balanced.
- Between-meal-snacks must be offered.

Reasonable consideration should be given to your likes and dislikes. Alternatives to the routine menu should be available. Make sure the dietitian or food service staff are aware of your preferences. □

Dining room service

The facility should encourage residents to eat in the dining room and to use regular utensils whenever possible; however, you should be allowed to eat in your room if you wish. If you need special help or eating equipment, the facility must provide it.

Special diets

Nursing homes must follow any food plans your doctor orders for you. Separate menus must be prepared for any special diets such as diabetic, low-salt, weight-loss and soft foods.

Special diet meals must meet the same standards that apply to regular food services.

Laundry

Laundry services and policies differ between facilities. The policies of your facility should be explained at admission and be in your admission contract.

If clothing is returned damaged (with more than ordinary wear and tear), the facility should repair or replace it. If items sent to the laundry are lost, the facility should take steps to find them. Make sure your clothing is clearly marked with your name. If your clothing keeps getting lost or damaged, report it to the facility administrator. □

Rights Regarding Liberty and Privacy

The fact that you are dependent on the nursing home for help with daily care does not mean that you have lost control over health care or other personal decision making. This section outlines what you can expect in the areas of privacy and other personal freedoms in the nursing home. Both facilities and residents must continually strive to ensure that residents remain as independent as possible in these areas.

Privacy during care and treatment

Your medical treatments and care may be far more intimate than any you have received before. Still, the facility's staff must respect and protect your dignity, privacy and personal wishes in all phases of your care. If you don't feel comfortable with receiving care from someone of the opposite sex, you have a right to request a change.

The privacy of your body must be maintained during all activities of personal hygiene to the degree your own safety or need for help allows. The door to your room should be closed and the privacy curtains drawn whenever you are receiving such care.

Room privacy

As important as it is, private time may be hard to come by in the nursing home. You may have to share a room with someone else. For safety reasons, doors to resident rooms can't be locked.

Securing privacy on a regular basis may require assertiveness on your part. Let your wishes for privacy be known. From time to time staff members may forget to knock before entering your room. Remind staff to knock and **wait to be invited into your room**. Only in an emergency should your requests for privacy be ignored. After all, your room is your home.

Married residents

You are entitled to privacy during visits with your spouse. If you want more privacy than usual, ask the facility to make suitable arrangements.

Married couples can share a room if they both wish to do so, as long as space is available. If space is not available, the facility should allow the couple to share a room when one becomes available.

If you are not married, the facility is not required to allow you to share a room; however, individual facility policies may allow you to do so. Facilities must inform you of these policies before you move in. □

Daily choices and schedules

The daily routines and schedules of the facility should be flexible. Schedules should be a balance between resident and facility needs. They should allow you personal choices in areas of your daily life that are important to you. There should also be some weight given to your lifelong daily patterns.

You should have some choice in when you get up, go to bed or take a nap; when and with whom you eat; what you wear; and when and how often you bath or take a shower. Other common areas of choice include how to spend your time, when you visit with other residents, and whether or not you take part in community events. If facility routines are too limiting, talk the problem over with staff so solutions can be found.

Courtesy and respect

As an adult, you have the right to be treated as such. Your ability to make decisions for yourself should be respected, as should your experience and accomplishments.

You have the right to be called by your proper name (e.g., Mrs. Smith, Mr. Jones) unless you say otherwise.

You have the right to ask questions of staff and get prompt, clear, understandable answers. □

Freedom from restraint

Physical restraints are any method or device that restricts your freedom of movement. **Chemical restraints** are any drugs used for discipline or convenience rather than to treat specific medical symptoms.

Restraints should never be used in place of care, staffing or supervision. Involuntary seclusion, being tied to handrails or being locked in a room are improper methods.

The facility must try to come up with creative alternatives to handle difficult situations before resorting to restraints. If less restrictive options haven't worked, the facility must explain the reason for using restraints, explain possible negative affects of restraints, and get your approval before they can be used.

Your doctor must write orders for the use of the restraint that justify its use. Written orders must specify what type, how long, and under what circumstances the restraint will be used. An independent consultant from outside the facility must review the necessity of any psychoactive drug yearly.

If you are ever restrained, staff must check on you regularly (at least every half hour) to make sure you are comfortable and safe. Physical restraints need to be released at least every two hours and 10 minutes of exercise given. □

**Freedom from
mental, verbal
and physical
abuse**

Good nursing care is sensitive to all of your needs--physical, emotional and spiritual. You should be treated with courtesy, respect and dignity at all times. Treatment should be given carefully and gently to avoid hurting you in any way.

Any staff member failing to give this type of careful, sensitive care may be guilty of physical, verbal or mental abuse, and should be reported immediately to the administrator or director of nursing. The facility is required to investigate abuse allegations and take action to prevent further abuse. When abuse occurs, facilities must report it to the State Health Department and State Ombudsman for investigation. If the facility seems unable to deal with the problem, you should report it yourself to the State agencies mentioned above.

**Confidentiality
of your records**

You have the right to confidential handling of your personal, medical and financial records. Only those people involved in your care or authorized by law should be allowed to read through your facility records.

Your written consent is required before anyone else can see your records. You always have the right to refuse to give your consent. □

Personal funds

You maintain the right to decide who manages your financial resources. You cannot be required to deposit your personal funds with the facility. If you make a formal request of the facility to manage them, they must do so.

If the facility manages your funds, they must hold, safeguard and account for them. You still retain control over how money is spent. The facility must get your okay before it can spend or give your money to anyone else. During normal business hours, you should be able to get your money whenever you need it.

How you decide to handle your money may well depend on the amount involved. Larger amounts (over \$2,000) are best handled by yourself or through a formal or legal arrangement.

Any amount over \$50 that the facility handles for you must be in an interest bearing account with the interest going to you. Separate records for each resident have to be kept, along with receipts for any purchases made with these funds. You can examine the facility's records of your accounts at any reasonable time. The facility must also give you a quarterly accounting.

In the event of your death, the facility has 30 days to transfer all funds held and give a final accounting to the person or probate jurisdiction handling your estate. □

Personal possessions

Although there's probably not enough space in your room for all the clothing, furniture and personal items you'd like to bring with you, the nursing home must allow for some. Before you move in, become familiar with facility policies on personal property.

The facility must take steps to protect your possessions. They can not place limits on the value of items you can bring in. Many facilities use inventory lists as a record of what possessions residents have brought with them. Try to keep such a list updated. Make sure your possessions get marked.

Care and respect should be extended towards all the belongings you bring to the facility. No one should use your possessions without your permission.

Most facilities have a safe or other methods of securing your valuables. If you have the facility keep your valuables, you should have reasonable access to them. The facility can not require you to turn your valuables over to them for safekeeping.

You should be informed of the facility policies on stolen or lost items. Be sure to report all losses to the facility right away so they can take action. The facility must promptly investigate any report of loss and must tell you the results of their investigation. □

**Phone, mail
and visitor
privacy**

Nursing homes have a duty to respect the privacy of your communications. The facility should provide quiet, private places where you can talk with doctors, relatives, friends and other visitors.

A phone should be available to you on a regular basis. It should be accessible and in a place where your conversations will not be overheard.

You should be able to send and receive your mail unopened and in a prompt manner. No one may open or read your mail unless you have asked them to first.

If you need help with reading, writing or using the phone, ask for it. Such help should be made available to you with attention to your privacy.

**Working for
the facility**

You have the right to decide whether or not you want to work in the facility. Your doctor may suggest that work be a part of your treatment and rehabilitation. You may wish to serve as a volunteer in the facility. Any work you decide to do should be part of your written plan of care. Within the plan, goals for the work should be identified and any payment to you clarified. The work plan should be approved by you yearly and reviewed regularly by the care planning team. □

Social and recreational activities

Since residents needs, interests and abilities vary, your facility's activities program should reflect this diversity.

Activities programs should:

- be based on your individual interests as identified in your assessment;
- be meaningful and stimulating;
- be geared to differing levels of functioning and ability to participate;
- include seasonal events;
- include events both in and out of the facility; and
- be scheduled at various times throughout the day and week.

Activity schedules should be posted in prominent places. You should be encouraged and helped to take part in those activities of interest to you. You retain the right not to participate.

Taking part in your community

You may keep as actively involved as you wish in any social, political, religious or community groups and activities (either in or out of the facility). The facility must help you pursue such interests, including helping make arrangements for transportation to community events or activities.

You should also be allowed to host activities within the facility. Check with the facility to make sure there is ample space and to avoid scheduling conflicts. □

Having visitors

You have the right to associate with anyone you choose, both in and out of the facility, as long as you don't interfere with the rights of others. If your facility has visiting hours, they should be flexible. Your family and relatives should have immediate visiting access to you if you wish to see them. Other visitors should be able to see you during normal waking hours.

You have the right to refuse to see any visitor or end a visit whenever you like.

Deciding to move out of the facility

You have the right to decide whether or not to enter a nursing home, how long you stay and when you leave.

If you decide to leave, the facility must help you plan your transition to make sure your needs will be met. They can help set up home health care or make arrangements for transfer to another facility. It's a good idea to consult with your doctor and your family or friends before discharging yourself.

If you choose to move out of the facility without your doctor's consent, the facility cannot stop you. The facility can ask you to sign a statement saying why you're leaving and releasing them from responsibility for your welfare. If you do leave, the facility is not required to re-admit you at a later date.



Your legal status

You retain the right to enter into legal relationships. You may:

- sell property;
 - make purchases;
 - execute legal instruments (such as wills, contracts and living wills);
 - get married or divorced;
 - register and vote; and
 - hold professional, occupational or vehicle operator licenses.
-

Guardianship, conservatorship & incompetency

As an adult you are assumed to be competent. In other words, the law presumes you are able to make decisions and to exercise your rights. Only a court can declare you incompetent. Should this happen, the judge will appoint a guardian or conservator for you, limiting your civil rights only to the extent necessary. Your court-appointed representative must see to it that you receive proper care and that your rights are honored.

Only the court can revoke the guardian or conservator's authority. If you feel your guardian or conservator is not acting in your best interests, contact the court or an advocacy group.

If you are declared incompetent, your guardian and the facility must still seek to find out your view and preferences, to the degree you are capable to expressing them.

CHAPTER TWO:

Suggestions for Resolving Complaints

This chapter suggests ways to resolve problems and have your concerns addressed. You may hesitate to take action. Sometimes it's hard to complain. Perhaps it seems that everybody is too busy already. Maybe you don't want to bother the staff or make a fuss.

The same problem may well be affecting other residents who don't have the physical or mental ability to bring it forward. Unless you take action, a problem may go unnoticed or unresolved. Speaking up is an important part of your responsibility for ensuring good care.

Quality care and respect are not special privileges. Good care is your right! □

Fear of reporting problems

You or your relatives may fear some kind of retaliation if you complain about problems. This is a common fear. Retaliation for voicing complaints is against the law. Any instance of retaliation should be reported to the State so prompt action can be taken. Retaliation also goes against the best interests of the facility. They usually want to hear about problems and resolve them so they have satisfied customers.

Depending on the complaint, different methods can be used to protect your identity. Because of their training and availability, your **local ombudsman** may be a good person to get some advice from on how to handle complaints.

If you fear retaliation, mention this concern when you seek help and stress your desire for confidentiality. Ask about the pros and cons of any method proposed so you understand the risks involved. Only give your permission to have someone pursue a complaint on your behalf if you feel comfortable with having it investigated.

Remember, sometimes problems will get resolved on their own - but usually you have to take action yourself to resolve them. □

Make your complaint specific

When making a complaint, act like a reporter. The facts you have tell the story. Describe what happened in as much detail as you can. How often does the problem occur - sporadic or daily? Give dates and times. Tell what you saw or heard or were told. Are other residents having the same problem? Here are two common areas of complaint.

Food: Say more than simply, "The food is awful." Describe **how** it is awful. Does it taste bad? Is there enough? Are you tired of having macaroni and cheese six times a week? Give an example of a typical, unsatisfactory meal and then explain what could be different or better.

Staffing: Just saying there isn't enough staff isn't as useful as citing specific problems. Maybe your call light isn't answered at nights, you didn't get bathed or shaved for over a week, or you have to eat cold food for dinner because no one came to help you. Maybe you were left on the toilet for half an hour or got no help to the bathroom three times last week on day shift.

Good information gathering provides details to help identify problems and their sources. Many details together give an overall picture of conditions. Keeping an "**information log**" that details dates, times and other such facts is especially useful. □

Informal complaint process

Bringing your concerns to light in an informal manner may result in their immediate resolution. Most facilities appreciate your allowing them to correct problems themselves.

Many concerns or complaints arise from simple misunderstandings, staff oversight or a lack of awareness of the legal requirements for resident care and rights.

If there are staff members you feel comfortable with, mention your concerns or problems to them.

Try discussing a problem with the person in charge of the specific area of your concern. Below is a list of possible problems and who is most often responsible for solving them.

Problems with nursing care

Each shift has a charge nurse who supervises the direct care employees. Talk first with the charge nurse responsible for the shift during which a problem occurs.

You can also contact the director of nursing services or the administrator.

Problems with housekeeping

Most facilities have someone in charge of housekeeping. Nursing supervisors may also have authority over housekeeping personnel. Discuss any housekeeping problems with these supervisors.

*Problems with
food*

Some nursing homes have a dietitian who is responsible for all aspects of buying, preparing and serving food. If the dietitian is not there full-time, the food service supervisors are responsible.

If nursing staff serves food, the nursing supervisors are responsible for seeing that it is served properly.

If a special diet is not being followed or you have problems with food services, talk to the dietitian, food service or nursing supervisor, or your doctor.

*Problems with
property and
finances*

Generally, a facility's bookkeeper keeps the records on how funds are spent and provides residents with an accounting. Help with buying clothing or personal necessities is usually provided by the activities or social services programs.

Facilities vary on how they handle lost or stolen articles. Be sure to report any lost articles to administrative staff so they can search for them. If problems persist, consider using the formal complaint procedures, the resident council or an outside resource. □

Formal complaint procedures

Every facility must have a clearly established, formal process for receiving and resolving problems and complaints. Grievance procedures should be in writing and explained to you and your family at the time you move in. Be sure you get a copy and keep it handy in case you need it in the future.

The complaint process should specify who receives complaints and how they will be handled. The facility has to respond to your grievance in a prompt, concrete manner. You must be told what they have done to respond to your concern and any further action they intend to take to prevent future occurrences.

The grievance procedure must offer you some choices. Examples include using a suggestion box, making formal appointments with staff to discuss problems, and working through resident or family councils. State inspectors review facility complaint logs, so putting something in writing can be a benefit. If you are having trouble getting a response from the facility, copying a letter to an ombudsman or health department sometimes helps also.

If you need more help or information or if your complaints are not being properly resolved by the facility, contact an outside resource identified later in this chapter. You have the right to seek outside help when you need it. □

Using your resident council

Other residents may share your problem. The resident council can be a good place to discuss problems. As a member of a group, you just may get faster action.

A resident council is usually a formally established group, part of whose function is to look into complaints. Family members can be included in the council or may choose to form a council of their own. The facility must provide private meeting space for both resident and family councils.

A resident council can help resolve complaints in many ways. Councils request face-to-face meetings with facility staff, conduct resident surveys, initiate petitions, form committees to address specific issues (like food), and send letters to administrators.

Facilities must consider consumer complaints and concerns seriously, and attempt to accommodate their recommendations. Any formal requests by the council should result in a prompt, concrete response from the facility.

State inspectors meet with resident council members and review council minutes as part of the inspection process. Make sure your minutes clearly report the problems brought before the council and whether any actions were taken to address them.

If your facility doesn't have a resident council, consider starting one. Your local ombudsman is available to help you start or improve your council. □

Facility inspections

The Department of Public Health and Human Services does unannounced inspections of all nursing homes at least once a year. These inspections are thorough, covering direct care, rights, safety and environmental areas.

Inspectors (called surveyors) must post a notice at main doors and nursing stations when they are doing a survey. They interview a sampling of residents and family members during their visit. Consumers are encouraged to share their concerns or views with inspectors.

If the inspectors find any problems, facilities are required to correct them. Resident councils members can request to attend the conference held at the end of the survey if they wish to find out what problems were found.

Facilities have to make the survey results available to residents and the public. This should be done about 3 weeks after the inspection. Anyone wishing to review the survey results should not have to ask to see them; they should be readily accessible in areas where residents frequent (like a lobby or a bulletin board). The results can be a useful source of information and a tool for evaluating care provided by the facility. □

Outside resources

Ombudsman Programs

Ombudsmen are resident advocates from the community who help you resolve concerns and problems. **Certified Local Ombudsmen** visit facilities on a regular basis to meet with residents, families and resident councils.

Ombudsmen provide information about nursing home care or issues as well as other topics like Medicaid, Medicare and Social Security. They are trained to investigate complaints about your health, safety and welfare in the facility, and help you exercise your rights.

State Ombudsman Program Senior & Long Term Care Div. DPHHS

P.O. Box 4210

Helena, Montana 59604-4210

Toll free phone number

1-800-332-2272

(In Helena: 444-4676)

Certified Local Ombudsman

Look for the Ombudsman poster in your facility or call your local Area Agency on Aging at:

1-800-551-3191

**Department of
Public Health &
Human Services**
PO Box 4210
Helena, MT 59604

*Certification Bureau/
Quality Assurance*
(406) 444-2099

The Certification Bureau is the main state agency responsible for inspecting and enforcing standards for nursing home care. State inspectors make annual unannounced inspections of all nursing homes. They interview residents, family members, and the resident council about resident care and how the facility responds to complaints.

Written complaints about care problems can be addressed directly to the Bureau. Inspectors can investigate complaints during an annual inspection or separately, depending on severity.

The results of the most recent inspection have to remain available in a public place in the facility throughout the year.

*Nursing Facilities Serv./
Senior & Long Term
Care Division*
(406) 444-4147

This bureau pays nursing homes for care they provide to Medicaid recipients. They contract with nurses to do regular reviews of resident care. They also enforce rules regarding mandated services included as part of Medicaid payment to nursing homes.

Other help

If all else fails, contact your national or state legislators or elected officials about your unresolved complaints. You can also contact a lawyer or the Montana Legal Services Association for legal help.□

Local Ombudsman Listing

To find which Certified Local Ombudsman visits the nursing home or personal care in your area, contact:

☎ your local Area Agency on Aging at **1-800-551-3191**

☎ or the State Ombudsman at **1-800-332-2272**

- Area I** - **centered at Glendive - Phone number: 687-3564**
Carter, Custer, Daniels, Dawson, Fallon, Garfield, McCone, Phillips, Powder River, Prairie, Richland, Roosevelt, Rosebud, Sheridan, Treasure, Valley, and Wibaux Counties.
- Area II** - **centered in Roundup - Phone number: 323-1320**
Big Horn, Carbon, Fergus, Golden Valley, Judith Valley, Musselshell, Petroleum, Stillwater, Sweetgrass, Wheatland and Yellowstone Counties.
- Area III** - **centered in Conrad - Phone number: 278-5662**
Blaine, Chouteau, Glacier, Liberty, Pondera, Teton and Toole Counties.
- Area IV** - **centered in Helena - Phone number: 447-1680**
Broadwater, Gallatin, Jefferson, Lewis & Clark, Meagher, and Park Counties.
- Area V** - **centered in Anaconda - Phone number: 563-3110**
Beaverhead, Deer Lodge, Granite, Madison, Powell and Silver Bow Counties.
- Area VI** - **centered in Polson - Phone number: 883-7284**
Lake, Lincoln, Mineral, Ravalli, and Sanders Counties.
- Area VII** - **covers the facilities operated by Native American Reservations. Phone number in Billings: 252-4812**
- Area VIII** - **covers Cascade County. In Great Falls: 454-6990**
- Area IX** - **covers Flathead County. In Kalispell: 758-5730**
- Area X** - **covers Hill County. In Havre: 265-5464**
- Area XI** - **covers Missoula County. In Missoula: 728-7682**

NOTES: _____

State Ombudsman Program

Senior & Long Term Division/DPHHS

PO Box 4210

Helena, Montana 59604-4210

Tollfree Phone Number

1-800-332-2272